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IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1957

No. 531

IN THE MATTERS

OF

SEABOARD AIR LINE RAILROAD COMPANY,

Petitioner,

v.

JAMES M. BRADDOCK,

Respondent.

SEABOARD AIR LINE RAILROAD COMPANY,

Petitioner,

v.

VIRGIL BRADDOCK,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

REPLY BRIEF OF PETITIONER.

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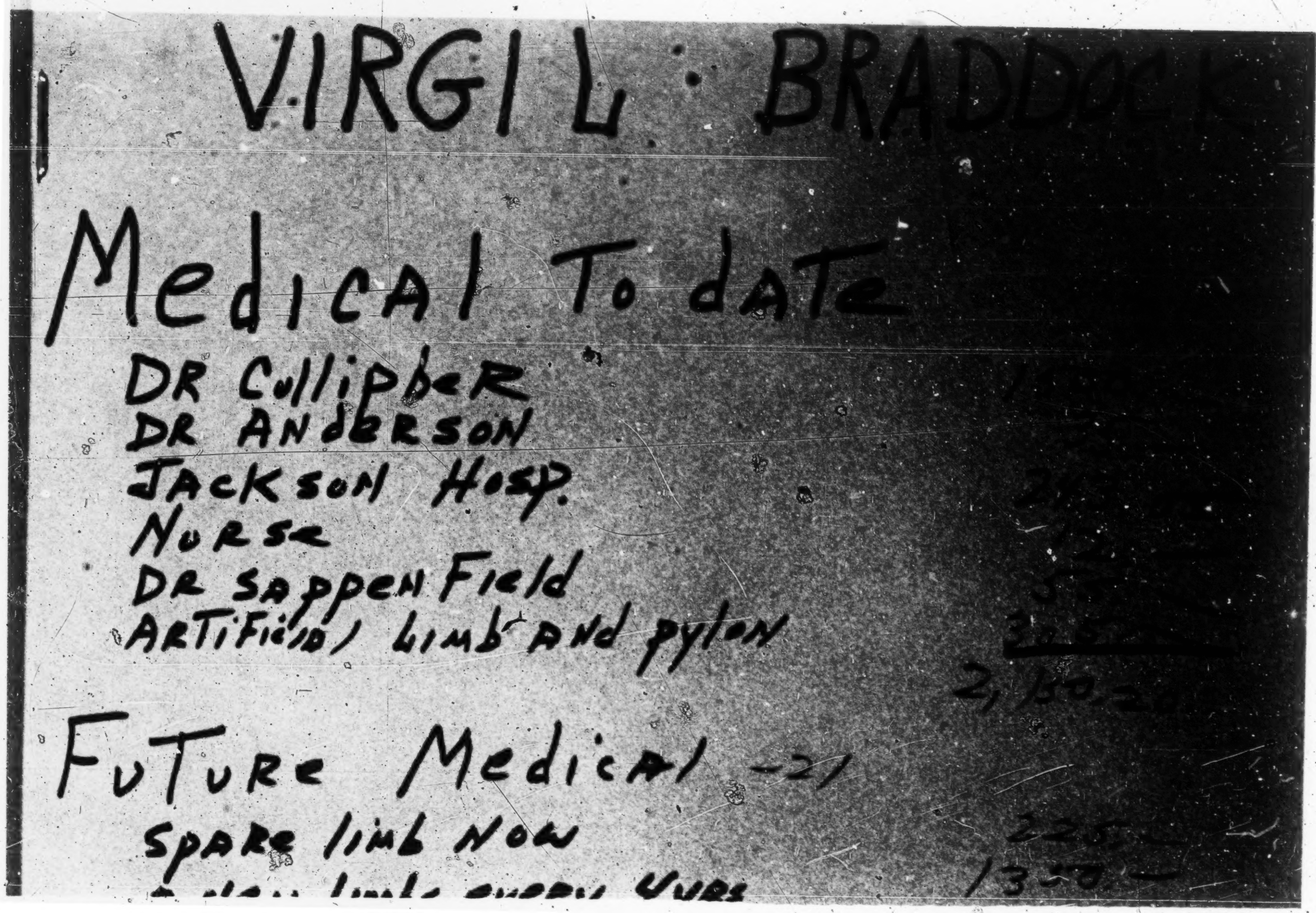
APPENDIX V.—Photograph of Placard Used In VIRGIL BRADDOCK CASE



IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1957

No. 521.

IN THE MATTERS

OF

SEABOARD AIR LINE RAILROAD COMPANY,

Petitioner,

v.

JAMES M. BRADDOCK,

Respondent.

SEABOARD AIR LINE RAILROAD COMPANY,

Petitioner,

v.

VIRGIL BRADDOCK,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

REPLY BRIEF OF PETITIONER.

Respondents contend, in their brief in opposition, that no Federal question is presented in the petition and further that no Federal question was raised either in the trial court or in the Supreme Court of Florida. Petitioner is compelled to point out the error of these statements.

The petition for certiorari is clearly based upon the proposition that the conduct of respondents' attorneys in the trial court deprived petitioner of its basic right to a fair and impartial trial, as guaranteed by Article I of the Fourteenth Amendment to the Constitution of the United States, and more particularly that such conduct deprived petitioner of its property without due process of law and denied petitioner the equal protection of the laws, as provided by the Fourteenth Amendment.

Reference to the record before this Court and the briefs certified from the Court below will disclose ample documentary evidence that petitioner's contention of the deprivation of its constitutional rights was consistently urged in the courts below. Article I of the Fourteenth Amendment to the Constitution of the United States was quoted in petitioner's appendix to its brief in the Court below (R. 151) and the constitutional question was clearly presented on pages 39 and 40 of petitioner's main brief in the Supreme Court of Florida, as follows:

> "° ° ° it is respectfully submitted that the denial by the trial Court of this defendant's motions for mistrial (A. 81, 89) and the failure of the trial Court to admonish plaintiffs' counsel and effectively cure the prejudicial effects of the improper and inflammatory remarks made throughout the course of the trial materially prejudiced this defendant, and the affirmance by this Court of the judgments herein appealed from will deprive this defendant of its property without due process of law, in violation of Section 12 of the Declaration of Rights of the Constitution of the State of Florida and Article I of the Fourteenth Amendment to the Constitution of the United States.
>
> "Even though it may be urged by plaintiffs' counsel that seasonable objections were not made by defen-

> dant's counsel to *all* of the improper remarks and statements, the law is well established that it is the duty of the trial Court of its own motion to protect litigants in their right to a verdict uninfluenced by appeals of counsel to passion or prejudice. This principle was clearly stated by the United States Supreme Court in the case of *New York Cent. Railroad Company* v. *Edward H. Johnson* (April 8, 1929) 279 U. S. 310, 73 L. Ed. 706, and in the following cases: *Atlantic Coast Line R. Co.* v. *Kammerer* (CCA 5th 1953) 205 F. 2d 525; *Atlantic Coast Line R. Co.* v. *Kammerer* (CCA 5th, 1955) 218 F. 2d 149, certiorari denied May 9, 1955, 99 L. Ed. 521; *Robinson* v. *Pennsylvania R. Co.* (CCA 3rd, 1954) 214 F. 2d 798; *U. S.* v. *American Die & Instrument Works, Inc.* (CCA 3rd, 1954) 213 F. 2d 731."

Petitioner then reiterated the constitutional question in its reply brief in the Supreme Court of Florida, where it said on page 28:

> "• • • The failure of the trial judge to curb the "excessive enthusiasm" of appellees' counsel by either requiring counsel to desist from the improper conduct which permeated the trial or by granting appellant's motion for mistrial, actually deprived this appellant of its property without due process of law in violation of Section 12 of the Declaration of Rights of the Constitution of the State of Florida and Article I of the Fourteenth Amendment to the Constitution of the United States."

The petition for rehearing filed in the Supreme Court of Florida by petitioner once again explicitly pointed up the constitutional question involved (R. 388). A casual reading of this petition for rehearing (R. 388) will show clearly the exact

DR SAPPEN Field
ARTIFICIAL LIMB AND PYLON 55
305
2,150.20

FUTURE MEDICAL -2/
SPARE LIMB NOW 225.—
2 NEW LIMBS EVERY 4YRS 1350.—
MAINT. + REPAIR LIMBS 900.—
ORTHOPEDIC SURGEON CHECKUPS 360.—
STUMP SOCKS 268.—
SHOES AND PANTS 24.—
SOCKS 36.—
NEW FEET FOR LIMB 41.—

LOSS OF SERVICES
HELP AROUND HOUSE
POTENTIAL EARNINGS TO AGE 21 6,000.—

TOTAL

chronological procedural steps taken by petitioner in raising and presenting the constitutional question.

Respondents' first assigned reason for denying the writ, contained on page 3 of their brief in opposition, is patently at variance with the facts of these instant cases. The flat assertion by respondents that "* * * no federal question was raised in the courts below * * *" is unsupported by the facts of these cases and the record before this Court. The true facts are that the Federal question was properly and timely raised by petitioner and squarely presented to the Supreme Court of Florida for determination by that Court.

Respondents cite *Congress of Industrial Organizations* v. *McAdory*, 325 U. S. 472, 89 L. Ed. 1741, in support of the general and fundamental principle that a Federal question must be raised in the courts below before it can be presented to this Court for decision. The correctness of this general principle is not disputed but the principle is not applicable to the facts as shown by the record before this Court because, as pointed out above, the Federal question was timely and properly raised by the petitioner in these cases.

The Supreme Court of Florida has never required a detailed, explicit and precise objection in the trial court in order to preserve a constitutional question for future consideration by an appellate court. In *Atlantic Coast Line R. Co.* v. *Lamphear* (Florida 1933) 146 So. 847, the Supreme Court of Florida said:

> "The Supreme Court has "appellate jurisdiction in all cases at law and in equity originating in Circuit Courts," section 5, art. 5, Constitution, and does not require assignments of error in appellate proceedings, to state that the matter assigned as error violates specific provisions of organic law."

The record here amply demonstrates the presentation of the constitutional question to the Supreme Court of Florida in such a manner that no decision by that Court could have been rendered without its consideration.

The respondents' assertion that the decision below does *not* conflict with *New York Central R. R. Company* v. *Johnson*, 279 U. S. 310, 73 L. Ed. 706, is erroneous on its face. Respondents here are attempting to maintain that the deprivation of petitioner's right to a fair and impartial trial, in violation of the due process clause and the equal protection clause of the Fourteenth Amendment to the United States Constitution, is solely a procedural matter of no concern to this Court. Respondents contention is in fact, tantamount to the proposition that the protection of the Federal Constitution against the deprivation of a fair and impartial trial extends only to trials conducted in Federal Courts. The fallacy of such a position is so patent as to require no further argument.

We do not believe such a flagrant disregard of fundamental rights as is evidenced in the instant cases can be sustained on the grounds that this Court has never reversed a State Court on this particular issue.

As pointed out in the petition, the instant cases have had untold publicity. The question of whether an attorney may engage in flagrantly prejudicial conduct before a jury in order to further his client's cause has become an issue of utmost importance to all litigants in all courts. If this Court has not the power of supervision to quell and quiet such assaults on fundamental rights of litigants in the United States, then the basic concepts of American justice will soon be but a memory.

CONCLUSION

Petitioner once again urges this Court to grant the petition

for certiorari and, by reversing the Court below and ordering new trials, reaffirm the principles of justice and fair play underlying the American judicial system.

Respectfully submitted,

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Attorneys for Petitioner

CERTIFICATE OF SERVICE

I CERTIFY that on this 23rd day of October, 1957, all adverse counsel representing all respondents have been served under Rule 33, Paragraph 1, by depositing a copy of this reply brief of petitioner in a United States Post Office, properly addressed to each of them, with postage affixed for delivery.

CHARLES R. SCOTT

One of the Attorneys for Petitioner.